*HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.Nos.9700, 9701, 9702 & 9703 of 2006

% 4-12-2006

U.Vijaya Lakshmi .. Petitioner

and

$ The Greater Visakhapatnam
represented by its Commissioner
and others ..
Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioners : C.Prakash Reddy

^ Counsel for respondent No.2 : Sri Nageswar Reddy

? CASES REFERRED :

Nil

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.Nos.9700, 9701, 9702 & 9703 of 2006

Date : 4-12-2006

Between :

U.Vijaya Lakshmi .. Petitioner

And

The Greater Visakhapatnam, represented by its Commissioner, Visakhapatnam and others .. Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.Nos.9700, 9701, 9702 & 9703 of 2006

COMMON ORDER:

1. These Writ Petitions are being disposed of by this Common Order since the questions involved being common and also the parties being common in all these Writ Petitions.

2. These Writ Petitions are filed by Bahujan SC, ST Badli Parisudha Panivarala Seva Sankshema Sangham, Ongole Town, Prakasam District, Andhra Pradesh, being aggrieved of the action of the 2nd respondent in awarding sanitation works of respective Divisions specified in the respective Writ Petitions of Ongole Municipality to Mary Health Workers, SC, ST Socio Economic & Development Welfare Society, Ongole, 3rd respondent herein, on the ground that such awarding of works in the respective Divisions would be arbitrary and

illegal being violative of A.P. Municipality Tender Rules 1967, hereinafter in short referred to as “Rules” for the purpose of convenience and further prayed for a consequential relief of cancellation of the said award of the respective works to the 3rd respondent and award the same in favour of the writ petitioner and to pass such other suitable orders.

3. The President of the petitioner-Society had sworn to the affidavits filed in support of these Writ Petitions. It is stated that the petitioner-Society was registered under Societies Registration Act, Act 35 of 2001, as Society No.527/2001 on 27-12-2001 and the objects of the petitioner-Society, hereinafter in short referred to as “Society” for the purpose of convenience, are to undertake sanitation works and provide employment and livelihood and also to provide economic assistance to its members. It is also stated that the petitioner has been elected as President of the Society at the Ongole General Body meeting held on 14-4-2004 and hence as President inasmuch as he is authorized to file these Writ Petitions the same had been filed on behalf of the petitioner-Society. It is further stated that the 2nd respondent issued the tender notice in the respective references specified in the affidavits filed in support of the

Writ Petitions dated 4-4-2006 inviting sealed tenders for sanitation work in different Divisions of Ongole town as specified in the respective affidavits from the Societies complying the requirements of G.O.Ms.No.581 dated 6-11-1996. In the respective Writ Petitions the estimated cost of the respective works are as hereunder :

W.P.No.9700/2006	-	Rs.39,55,590/-
W.P.No.9701/2006	-	Rs.54,92,790/-
W.P.No.9702/2006	-	Rs.38,43,000/-
W.P.No.9703/2006	-	Rs.49,86,900/-

Several other factual details had been narrated and it is stated that the 2nd respondent received 14 tenders from different Societies for the said work and among them seven tenders were rejected on the ground that they are not conforming to the tender specifications. It is also specifically averred in the respective affidavits that the lowest tender had been submitted by the petitioner-Society and the same had been received by the 2nd respondent. It is further stated that the 2nd respondent opened the tenders on 21-4-2006 at 4.30 p.m. in the presence of all tenderers and it is also stated that to the knowledge of one and all the petitioner-Society was the lowest tenderer. But however, the 2nd respondent without following the Tender Rules and various G.Os., awarded

the tender to the 3rd respondent who had quoted higher amounts than the respective amounts already specified supra. The details relating to the difference of amount also had been narrated in the respective affidavits filed in support of the Writ Petitions. Rule 6 of the Rules referred to supra reads as hereunder :

> "The lowest tender should ordinarily be accepted. When it is considered undesirable to accept the lowest tender, the next lower tender should be accepted unless adequate grounds can be recorded for rejecting that tender also. The reasons recorded for the rejection of these tenders or for the acceptance of any other tender shall be recorded in writing and shall be marked and kept confidential and made available for audit if so desired."

Further specific stand is taken that the 2nd respondent having accepted the tender submitted by the petitioner-Society and having found eligible in all respects being the lowest tenderer should have been awarded with the work. The writ petitioner also had averred several other factual details relating to the work experience. It is also further stated that the Municipal Council for Ongole Municipality approved the tender of the 3rd respondent in the meeting held on 29-4-2006 in a hurried manner totally disregarding the Rules governing the field despite the fact that the

lowest had been quoted by the writ petitioner in relation to the works in question in all these Writ Petitions.

4. It may be pointed out at this juncture itself that in the proceedings relating to the General Body meeting held on 29-4-2006 on Agenda No.59 of Ongole Municipal Council, the 3rd respondent, shown as No.3, under the Payment per one labour, had been shown to have quoted Rs.104-25 ps. whereas the petitioner-Society, shown as No.9, under the said column, had been shown to have quoted Rs.91.76.

5. Counter affidavit is filed by the 2nd respondent denying certain allegations and taking a specific stand that the procedure had been followed and hence awarding of the work in favour of 3rd respondent is neither arbitrary nor illegal being violative of the Rules or G.O.Ms.No.581 dated 6-11-1996. It was further averred at para-4 of the counter affidavit that in view of the conditions in G.O.Ms.No.581 dated 6-11-1996 and the Minimum Wages Act and the circular issued by the Labour Department and the Tender Rules of A.P.Municipalities Act with respect to general works i.e., civil works are not applicable for supply of sanitary workers. It is further stated that the 2nd respondent had followed the tender rule, finalized and placed the tenders before the Council

for acceptance and the Council unanimously approved the tender of the 3rd respondent basing on Contract Labour R & A Rules 1971 and the Provident Fund Rules. It is also further stated that the Minimum Wages Act and the Provident Fund Rules are to be followed as the subject matter of the tenders are with respect to the supply of workers by the registered societies for attending to the sanitation work within the limits of the 2nd respondent-Municipality. The wages fixed under the Minimum Wages Act and the Provident Fund Rules are to be followed while fixing the minimum wages to be paid by the 2nd respondent to each worker per day. It is submitted that the 2nd respondent followed the Minimum Wages Act, Provident Fund Rules and fixed the wages to each worker per day and the Provident Fund contribution of worker and principal employer and fixed the estimate tender rates and the same were shown in the tender schedules. It is also further averred in para-7 of the counter affidavit that actually the 2nd respondent had recommended the lowest tender of Retired and Badli SC, ST Workers Society who quoted less than the petitioner in the Agenda with a condition of payment of wages as per the Minimum Wages Act and the P.F. Rules to the workers. But the Council unanimously approved the tender of the 3rd

respondent keeping in view the Minimum Wages Act and the Provident Fund Rules in force. The allegation that the work order was issued in a hurry also had been denied. It is further stated that the work order was issued to the 3rd respondent as Council in its resolution No.59 dated 29-4-2006 approved the same keeping in view the importance and urgency of P.H. and sanitation. Further specific stand is taken that the petitioner-Society had not quoted the Provident Fund amount to the extent of the share of the employer in the tender and the 3rd respondent quoted the minimum wages payable to the worker as per the Minimum Wages Act and the Provident Fund payable by the contractor from the shares of both employee and employer totaling an amount of Rs.104-25. Certain other details relating to the Minimum Wages Act and the other relevant Legislations and the Rules made thereunder, G.O.Ms.No.581, M.A. dated 6-11-1996 and the Circulars of Labour Department from time to time also had been referred to. Certain further particulars also had been furnished at paras 9, 10 and 11 of the counter affidavit.

6. The respective Counsel on record, the Counsel representing the petitioner in all these Writ Petitions Sri Prakash Reddy and also the learned standing Counsel representing the Municipality Sri

Nageswar Reddy had pointed out to the relevant guidelines relating to the payment to be made to per head labour and explained how the respective stands taken by the petitioner or the Municipality concerned would be justifiable.

7. It is no doubt true that on the material available on record, there appears to be some element of confusion and while making specifications relating to the conditions to be satisfied in case of tenders and awarding of works, the local bodies are expected to adopt clear procedure. May be, due to the confusion created the said amount was quoted by the petitioner-Society. Be that as it may, inasmuch as the welfare of the labour always to be kept in mind, in the light of the specific stand taken in the respective counter affidavits filed by the Municipality in question, the awarding of the contract works in favour of the 3rd respondent-Society cannot be found fault. But however, this Court is inclined to observe that while specifying the conditions it would be always just and appropriate to give clear specifications in relation to the particulars to be furnished so that the respective Societies or the parties interested in getting at such works may clearly understand the terms and conditions without committing mistakes which may flow out of such

confusion. Confusing and oscillating particulars to be furnished in tenders always may have to be avoided by certainty and clarity so as to minimize the controversies of this nature. It is also pertinent to note that in such cases there is every possibility of misutilisation of the discretionary limit landing the tenderers into unforeseen troubles. Extraneous grounds unspecified in the tender conditions cannot be made a ground in considering the qualified tenderers or otherwise.

8. Except making the above observations, nothing further can be done by this Court at this juncture. Accordingly the Writ Petitions are bound to fail and the same shall stand dismissed. Inasmuch as for a couple of months it is stated that the 3rd respondent has been transacting the work, the parties to the lis to bear their own costs.

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Justice P.S. Narayana

Date : 4-12-2006

L.R. copy to be marked : YES / NO

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